IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 183 of 2002

Kumad Gupta
S/o late Mool Chand Gupta
R/o Gularbhoj
P.s. Gadarpur
District Udham Singh Nagar …….Appellant (In Jail)

Versus

State of Uttaranchal ……Respondent.

Shri Lokendra Dobhal, learned counsel for the appellant.
Shri Lalit Verma assisted by Shri Rajeev Mohan Birkhani, learned A.G.A. for the State.

Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 374 (2) of Code of Criminal Procedure, 1973 (for brevity herein after referred as Cr.P.C.), is directed against the judgment and order dated 27.05.2002, passed by learned Sessions Judge, Udham Singh Nagar in Sessions Trail No. 281 of 1999, whereby appellant Kumud Gupta is convicted under section 304-B Indian Penal Code, 1860 (for brevity herein after referred as I.P.C.), and sentenced to rigorous imprisonment for a period of ten years.

2. Heard learned counsel for the parties.

3. Prosecution story in brief is that Sangeeta Gupta (deceased), got married to Kumud Gupta (appellant) on 19.06.1994 in Village Gularbhoj, P.W. Gadarpur, District Udham Singh Nagar. P.W. 3 Mool Chand Gupta, father of the deceased, informed to the police that his daughter used to be harassed for non fulfillment of dowry and on its basis, earlier a criminal case relating to offence

Punishable under Section 498-A I.P.C. was registered against the appellant and his other relatives. Appellant Kumud Gupta, remained in jail for three months in said case. Later on, it appears that Kumud Gupta expressed regrets and Sangeeta Gupta (deceased) was taken by him to her in-laws house. According to the prosecution story, against Sangeeta Gupta started getting harassed by Kumud Gupta. On 14.06.1999, it was found that Sangeeta Gupta has died. P.W. 1 Pramod Kumar, brother of the appellant, gave information of death of Sangeeta Gupta to the police and to the parents of the deceased. A inquest report (Ext A-1) was prepared by the police after taking the dead body of Sangeeta Gupta in their custody. P.W. 3 Mool Chand Gupta, father of the deceased, lodged First Information Report (Ext. A-2) against appellant Kumud Gupta and his mother Smt. Ram Murty. A case crime No. 412 of 1999 was registered under Section 304 B I.P.C. against both the accused. On post mortem examination of the dead body, it was found that the deceased had died due to asphyxia by strangulation. After Interrogation of the witnesses and completing the investigation, the police submitted charge sheet against both the accused, who stood their trial in connection of offence punishable under Section 304-B I.P.C.

4. On behalf of the prosecution, after the charge is framed and accused, pleaded not guilty, witnesses P.W. 1 Pramod Kumar Gupta (brother of the appellant), P.W. 2 Ashok Kumar (witness of the inquest report), P.W. 3 Mool Chand Gupta (informant), P.W. 4 Khyaliram (who attended the marriage between the deceased and the

appellant), P.W. 5 Dr. K.C. Joshi, who conducted the post mortem examination, P.W. 6 Prabal Pratap Singh (Investigation Officer), P.W. 7 G.S. Satsangi (Sub-Inspector who prepared the inquest report), P.W. 8 Munshiram, P.W. 9 Constable Virendra Pal Singh and P.W. 10 Head Constable Ashok Kumar (who prepared) the check report and made entry in the general diary) were examined.

5. All the documentary and oral evidence was put to both the accused under Section 313 Cr.P.C. in reply to which the accused admitted that appellant was married to deceased Sangeeta Gupta, However, regarding other allegations the evidence was alleged to be false. In defence, D.W. 1 Smt. Manukuliya, an neighbour of the appellant was w got examined. After hearing the parties, the trial court found that the charge was not proved against Smt. Ram Murti and she was acquitted of charge but the trial court found that charge of offence punishable under Section 304B I.P.C. is proved against accused/appellant Kumud Gupta, as such he was convicted and after hearing on sentence, sentenced him to rigorous imprisonment of a period of ten years.

6. After hearing the parties and going through the statement of witnesses and documents on record of the trial court, this Court is in agreement with the trial court that the charge of offence punishable under Section 304 B I.P.C. is proved against accused/appellant Kumad Gupta and there is no error of law or that of fact in recording the conviction of the appellant relating to

offence allegedly committed by him punishable under Section 304 B I.P.C. The prosecution has been successful in proving that the deceased was harassed for non fulfillment of demand of dowry and was subjected to cruelty before she died unnatural death within a period of seven years of the marriage with appellant.

7. However, on the point of sentence, learned counsel for the appellant, submitted that convict/appellant Kumud Gupta is in jail since 1999, as such he has completed about seven years in jail. In this connection, it is requested on behalf of the appellant that his sentence may be reduced. After considering the facts and circumstances of the case in which offence is committed by the accused/appellant Kumud Gupta, in the opinion of this Court, punishment of rigorous imprisonment for seven years would have met the ends of justice. As such, this Court is of the view that the sentence of ten years awarded by the trial court can be reduced to seven years to meet the ends of justice in the case. Accordingly, this appeal is dismissed on the point of conviction, but partly allowed on the point of sentence. The sentence awarded by the trial court is reduced from rigorous imprisonment of ten years to rigorous imprisonment of seven year. Since the appellant in jail, he shall be set at liberty if the period of seven years has been served out by him.

Dt.10.11.2006 **(Prafulla C. Pant, J.)**
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